

No. 15877

United States
Court of Appeals
for the Ninth Circuit

UNION OIL COMPANY OF CALIFORNIA, a
Corporation,

Appellant,

vs.

ANTOINE BELLECI,

Appellee.

Transcript of Record
(In Three Volumes)

Volume I
(Pages 1 to 29)

FILED

MAY - 2 1958.

PAUL P. O'BRIEN, CLERK

Appeal from the United States District Court for the
Northern District of California,
Southern Division.

No. 15878

United States
Court of Appeals
for the Ninth Circuit

UNION OIL COMPANY OF CALIFORNIA, a
Corporation,

Appellant,

vs.

ANTOINE BELLECI, Administrator of the Estate
of JACQUES CARDINALE, Deceased,

Appellee.

Transcript of Record
(In Three Volumes)

Volume I
(Pages 1 to 29)

Appeal from the United States District Court for the
Northern District of California,
Southern Division.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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MICHELSON, WHELAN AND MICHELSON,
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Proctors for Libelant and Appellee.

FREDERIC G. NAVÉ,
BOYD & TAYLOR,
350 Sansome St.,
San Francisco, California,

Proctors for Respondent and Appellant.

In the District Court of the United States in and for the Southern Division of the Northern District of California

In Admiralty No. 27125

ANTOINE BELLECI, Administrator of the Estate of **JACQUES CARDINALE**, Deceased,

Libelant,

vs.

UNION OIL COMPANY OF CALIFORNIA, a Corporation; **FRANCES E. CARDINALE**, Administratrix of the Estate of **FRANK JOSEPH CARDINALE**, Also Known as **FRANK J. CARDINALE**, Deceased; **IDA-LINE JENNER CARDINALE**; **BLACK COMPANY**, a Corporation; **JOHN DOE**, **RICHARD ROE** and **PETER ROE**,

Respondents.

LIBEL

(Damages for Wrongful Death—\$150,000.00)

To the Honorable Judges of the Above-Entitled Court:

The libel of Antoine Belleci, Administrator of the Estate of Jacques Cardinale, Deceased, in a case of libel, civil and maritime, for damages for wrongful death, alleges as follows:

I.

That on or about the 28th day of September, 1954, Jacques Cardinale died, that thereafter, to wit, on

the 8th day of April, 1955, after proceedings duly had for such purpose, Antoine Belleci was duly appointed Administrator of the Estate of Jacques Cardinale, Deceased, by the Superior Court of the State of California, in and for the County of Monterey, and on said 8th day of April, 1955, qualified as such Administrator and entered upon the administration of said estate and ever since such time has been and now is the duly appointed, qualified and acting Administrator of the Estate of said Deceased.

II.

That the respondent, Union Oil Company of California, is now and was at all times herein mentioned a corporation duly organized and existing under and by virtue of the laws of the State of California and authorized to do and doing business in the City and County of San Francisco, State and Northern District of California.

III.

That the respondents, Black Company, a corporation, and White Company, a corporation, are now and were at all times mentioned herein corporations duly organized and existing under and by virtue of the laws of one of the States of the United States and were at all of said times authorized to do and doing business in said City and County of San Francisco, State and Northern District of California.

IV.

That the true names of respondents, Black Company, a corporation; White Company, a corpora-

tion; John Doe, Richard Roe and Peter Roe, are unknown to libelant and for that reason said respondents are sued herein under fictitious names. Libelant prays that when the true names of said respondents are ascertained they be substituted herein the place and stead of said fictitious names.

V.

That on or about the 28th day of September, 1954, Frank Joseph Cardinale, also known as Frank J. Cardinale, died; that thereafter, to wit, on the 12th day of November, 1954, after proceedings duly had for such purpose, respondent Frances E. Cardinale was duly appointed administratrix of the estate of Frank Joseph Cardinale, also known as Frank J. Cardinale, Deceased, by the Superior Court of the State of California, in and for the County of Monterey and on said 12th day of November, 1954, qualified as such administratrix and entered upon the administration of said estate and ever since such time has been and now is the duly appointed, qualified and acting administratrix of the estate of said Deceased. That said Frank Joseph Cardinale, also known as Frank J. Cardinale, Deceased, will hereinafter be referred to as "Decedent."

VI.

That at all times on or about the 28th day of September, 1954, and at the time Jacques Cardinale was injured and died as hereinafter alleged, and for a long time prior thereto, said Decedent and respondent Idaline Jenner Cardinale owned, oper-

ated, managed, controlled, navigated and maintained the fishing vessel Santa Lucia, which vessel was at all of said times a vessel of the American Merchant Marine, employed as a commercial fishing vessel.

VII.

That at all times on or about the 28th day of September, 1954, and at the time Jacques Cardinale was injured and died as hereinafter alleged, said Jacques Cardinale was employed by said Decedent and respondent, Idaline Jenner Cardinale, to work as a seaman, to wit, as a fisherman on board, and as a member of the crew of, said vessel Santa Lucia, and was working on board said vessel in the course and scope of his said employment; that during all of said times said vessel was afloat on navigable waters.

VIII.

That on or about the 28th day of September, 1954, and at the time Jacques Cardinale was injured and died as hereinafter alleged and for a long time prior thereto, respondent Union Oil Company of California, a corporation, owned, maintained, managed, operated and controlled, on piers and land at Avila, California, a commercial marine service and fueling station, gasoline, oil and other petroleum products, tanks and other facilities for the storage of said gasoline, oil and other petroleum products, and equipment for use in connection with said commercial marine service and fueling station, gasoline, oil, other petroleum products, tanks and other facilities.

IX.

That on or about the 28th day of September, 1954, and at the time Jacques Cardinale was injured and died as hereinafter alleged, and while said vessel was moored at one of said piers in connection with the fueling of said vessel by respondent Union Oil Company of California, a corporation, and said commercial marine service and fueling station, said Decedent and respondents herein, except respondent administratrix, negligently caused and permitted an explosion and fire to occur in, on, around and about said vessel, whereby Jacques Cardinale was caused to be critically and fatally injured and from and because of said injuries said Jacques Cardinale died on said vessel on or about said 28th day of September, 1954; that the aforesaid negligence of Decedent and respondents herein, except respondent administratrix, directly and proximately caused Jacques Cardinale to be critically and fatally injured and to die as aforesaid and Decedent and respondents herein, except respondent administratrix, did negligently cause and permit Jacques Cardinale to be so critically and fatally injured and to die as aforesaid.

X.

That at the time Jacques Cardinale was injured and died as aforesaid, he was forty-seven years of age, in excellent physical and mental condition and bodily vigor and earning or capable of earning at his occupation of seaman approximately \$350.00 per month, together with his board and lodging of the reasonable value of \$240.00 per month.

XI.

That said Jacques Cardinale left surviving him, his widow, Marie Cardinale, and two minor children, Francine Cardinale and Vincent Cardinale, the exact ages of said widow and children being presently unknown to libelant, and as to which libelant prays leave to amend this libel and produce proof thereof at the time of trial. That this libel is brought for and on behalf of and for the benefit of said widow and minor children.

XII.

That said widow and minor children of said Jacques Cardinale were dependent upon and did receive from said Jacques Cardinale their maintenance and support, and that by reason of his death, as aforesaid, said widow and minor children ever since his death have been and for the rest of their lives will be deprived of such maintenance and support.

XIII.

That by reason of the premises, said widow and minor children have been damaged in the sum of \$150,000.00, which sum libelant asks this court to award him for the benefit of said widow and minor children.

XIV.

That claim in respect to said damages for the wrongful death of said Jacques Cardinale was heretofore and within the time prescribed for the filing of creditor's claims by the provisions of the Probate Code of California and the Notice to Creditors pub-

lished by respondent Frances E. Cardinale, Administratrix of the Estate of Frank Joseph Cardinale, also known as Frank J. Cardinale, Deceased, duly and regularly presented to the said Estate as directed in said Notice to Creditors, and said claim has been rejected and disallowed.

XV.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, libelant prays that process, according to the courses of this Honorable Court in causes of admiralty and maritime jurisdiction may issue against the respondents and each of them and that respondents and each of them may be cited to appear and answer, all and singular, the matters aforesaid and that this Honorable Court would be pleased to decree to the libelant the sum asked for by the libelant in the aforesaid libel and for costs and for such other and further relief as in law and justice libelant is entitled to receive.

/s/ RUSSELL ZACHES,

/s/ SAMUEL VARTAN,

MICHELSON, WHELAN &
MICHELSON,
Proctors for Libelant.

United States of America,
State and Northern District of California,
County of Monterey—ss.

Antoine Belletci, being first duly sworn, deposes and says:

That he is the duly appointed, qualified and acting Administrator of the Estate of Jacques Cardinale, Deceased, and the libelant named in the above-entitled cause; that he has read the within and foregoing libel and knows the contents thereof; that the same is true of his own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters that he believes it to be true.

/s/ ANTOINE BELLECI.

Subscribed and sworn to before me this 2nd day of May, 1955.

[Seal] /s/ EDNA MASON,
Notary Public in and for the County of Monterey,
State of California.

[Endorsed]: Filed May 3, 1955.

[Title of District Court and Cause.]

No. 27125

ANSWER TO LIBEL

Comes now the Respondent, Union Oil Company of California, a corporation, and answering Libel-

ant's Libel on file herein, admits, denies and alleges as follows:

I.

Answering Paragraphs I, V, VI, VII, VIII, XII and XIV, said respondent alleges that it has no information or belief upon the subject sufficient to enable it to answer the allegations therein contained and placing its denial on that ground, denies each and every, all and singular, the allegations therein contained and each and every part thereof.

II.

Answering Paragraph X, denies each and every, all and singular, the allegations therein contained and each and every part thereof insofar as the same names, mentions or concerns this answering respondent.

III.

Answering Paragraphs XIII and XV, denies each and every, all and singular, the allegations therein contained and each and every part thereof.

Denies that Libelant, Antoine Belleci, Administrator of the Estate of Jacques Cardinale, Deceased, has been damaged in the sum of \$150,000.00 or any other sum or sums whatsoever or at all.

Further answering said Libel, and as and for a separate and distinct defense thereto and plea of contributory negligence, said respondent alleges that the decedent, Jacques Cardinale, was negligent and careless in and about the matters set forth in said Libel in the following manner, to wit: That at the

said time and place said decedent, Jacques Cardinale, failed to use due or any care or caution for the protection of his own safety; that said acts of carelessness and negligence on his part proximately caused or contributed to the damage sustained or injury sustained; that said acts of carelessness and negligence of the said decedent, Jacques Cardinale, are imputed to Antoine Belleci, Administrator of the Estate of Jacques Cardinale, Deceased.

Wherefore, said respondent prays that Libelant take nothing by his action and that said respondent be hence dismissed with its costs herein incurred.

BOYD & TAYLOR,

By /s/ FREDERIC G. NAVÉ,
Proctors for Respondent, Union Oil Company of
California, a Corporation.

State of California,
City and County of San Francisco—ss.

Frederic G. Nave, being first duly sworn, deposes and says: That he is one of the proctors for respondent herein; that he has read the foregoing Answer to Libel and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes them to be true.

/s/ FREDERIC G. NAVÉ.

Subscribed and sworn to before me this 13th day of June, 1955.

[Seal] /s/ GINA MATTEUCCI,
Notary Public in and for the City and County of San Francisco, State of California.

My Commission Expires August 20, 1957.

Affidavit of Service by Mail attached.

[Endorsed]: Filed June 13, 1955.

[Title of District Court and Cause.]

No. 27125

**ANSWER TO LIBEL FOR DAMAGES
FOR WRONGFUL DEATH**

To the Honorable Judges of the Above-Entitled Court:

Frances E. Cardinale, administratrix of the Estate of Frank Joseph Cardinale, also known as Frank J. Cardinale, deceased, and Idaline Jenner Cardinale answer the libel filed herein, admitting, denying and alleging as follows:

I.

Answering paragraphs I, III, IV, VIII, X, XI and XII of libelant's Libel, respondents allege that they have no information or belief sufficient to enable them to answer the allegations therein contained, and, placing their denial on that ground, deny each and every, all and singular, the allegations therein contained.

Answering paragraphs VI, VII and IX of said Libel, respondents deny each and every, all and singular, the allegations therein contained.

Deny that the widow and two minor children of said Jacques Cardinale have been damaged in the sum of \$150,000.00, or any other sum or sums whatever, or at all.

Wherefore, respondents Frances E. Cardinale and Idaline Jenner Cardinale pray that libelant take nothing by his action and that said respondents be dismissed with their costs herein incurred.

/s/ MORTON L. SILVERS,
MORGAN & BEAUZAY,
Proctors for Respondents Frances E. Cardinale and
Idaline Jenner Cardinale.

State of California,
City and County of San Francisco—ss.

Frances E. Cardinale, being first duly sworn, deposes and says:

That she is one of the respondents in the above action; that she has read the foregoing Answer to Libel for Damages for Wrongful Death, and knows the contents thereof; that the same is true of her own knowledge, except as to the matters which are therein stated on her information or belief and as to those matters that she believes it to be true.

/s/ FRANCES E. CARDINALE.

Subscribed and sworn to before me this 1st day
of October, 1955.

[Seal] /s/ PAULA G. SMITH,
Notary Public in and for the City and County of
San Francisco, State of California.

My Commission Expires November 18, 1958.

State of California,
City and County of San Francisco—ss.

Idaline Jenner Cardinale, being first duly sworn,
deposes and says:

That she is one of the respondents in the above
action; that she has read the foregoing Answer to
Libel for Damages for Wrongful Death, and knows
the contents thereof; that the same is true of her
own knowledge, except as to the matters which are
therein stated on her information or belief and as
to those matters that she believes it to be true.

/s/ IDALINE JENNER CARDINALE.

Subscribed and sworn to before me this 1st day
of October, 1955.

[Seal] /s/ PAULA G. SMITH,
Notary Public in and for the City and County of
San Francisco, State of California.

My Commission Expires November 18, 1958.

Affidavit of Service by Mail attached.

[Endorsed]: Filed Oct. 4, 1955.

[Title of District Court and Cause.]

MINUTE ORDER RE CONSOLIDATION
OF CASES

Present: The Honorable Louis E. Goodman,
District Judge.

27116—Salmeri vs. Cardinale;
27117—Salmeri vs. Union Oil Co. of Calif.;
27118—Pedrasaz vs. Cardinale;
27119—Pedrasaz vs. Union Oil Co. of Calif.;
27120—Tarantino vs. Cardinale;
27121—Tarantino vs. Union Oil Co. of Calif.;
27122—Belleci vs. Cardinale;
27123—Belleci vs. Union Oil Co. of Calif.;
27124—Belleci vs. Cardinale;
27125—Belleci vs. Union Oil Co. of Calif.;
27156—J. Romeo vs. Union Oil Co. of Calif.;
27157—S. Romeo vs. Union Oil Co. of Calif.;
27158—Cardinale vs. Union Oil Co. of Calif.;
27159—Adagio vs. Union Oil Co. of Calif.

The above-entitled cases came on regularly this day to be set for trial. On motion of John Whelan, Esq., Ordered all of these cases and case No. 27364—Cardinale vs. Union Oil Company—be consolidated and trial set for August 26, 1957.

FINDINGS OF FACTS, CONCLUSIONS OF
LAW AND DECISION OF THE COURT

(Reporters Transcript—Sept. 12, 1957)

[See Volume I, Pages 17 to 43, Case No. 15875,
Joseph Salmeri vs. Union Oil Co., etc.]

In the District Court of the United States, in and for the Southern Division of the Northern District of California

In Admiralty, Nos. 27124 and 27125
(Consolidated)

ANTOINE BELLECI, Administrator of the Estate of JACQUES CARDINALE, Deceased,

Libelant,

vs.

FRANCES E. CARDINALE, Administratrix of the Estate of FRANK JOSEPH CARDINALE, Also Known as FRANK J. CARDINALE, Deceased; IDALINE JENNER CARDINALE, et al.,

Respondents.

ANTOINE BELLECI, Administrator of the Estate of JACQUES CARDINALE, Deceased,

Libelant,

vs.

UNION OIL COMPANY OF CALIFORNIA, a Corporation; FRANCES E. CARDINALE, Administratrix of the Estate of FRANK JOSEPH CARDINALE, Also Known as FRANK J. CARDINALE, Deceased; IDALINE JENNER CARDINALE, et al.,

Respondents.

FINAL DECREE

The above-entitled cases having come on regularly to be heard on the 3rd, 4th, 5th, 6th, 9th, 10th, 11th

and 12th days of September, 1957, and the court having considered the evidence, both oral and documentary, and the arguments of counsel, and the cause having been submitted and the court having made and entered its Findings of Fact and Conclusions of Law, Now, Therefore,

It Is Ordered, Adjudged and Decreed that libelant, Antoine Belleci, Administrator of the Estate of Jacques Cardinale, Deceased, recover of and from the respondents, Frances E. Cardinale, Administratrix of the Estate of Frank Joseph Cardinale, also known as Frank J. Cardinale, Deceased, and Idaline Jenner Cardinale, and Union Oil Company of California, a corporation, jointly and severally, the sum of \$41,417.23 of which the sum of \$20,000.00 is allocated to the widow, Marie Cardinale, \$7,500.00 is allocated to the daughter, Francoise Noel Cardinale, and \$12,000.00 is allocated to the son, Vincent Joseph Cardinale, and also of which the sum of \$1,917.23 is allocated for funeral expenses.

It Is Further Ordered, Adjudged and Decreed that libelant, Antoine Belleci, Administrator of the Estate of Jacques Cardinale, Deceased, recover of and from the respondents, Frances E. Cardinale, Administratrix of the Estate of Frank Joseph Cardinale, also known as Frank J. Cardinale, Deceased, and Idaline Jenner Cardinale, and Union Oil Company of California, a corporation, jointly and severally, his costs involved herein.

Dated: October 4th, 1957.

/s/ SYLVESTER J. RYAN,
United States District Judge.

Approved as to Form and receipt of a copy of the above and foregoing Final Decree is hereby acknowledged this 27th day of September, 1957.

BOYD & TAYLOR,
By /s/ FREDERIC G. NAVÉ,
/s/ MORTON L. SILVERS,
MORGAN & BEAUZAY,
Proctors for Respondents.

[Endorsed]: Filed Oct. 10, 1957.

[Title of District Court and Cause.]

No. 27125

NOTICE OF APPEAL

Notice Is Hereby Given that Union Oil Company of California, a corporation, respondent above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on October 11, 1957.

Dated: November 6th, 1957.

FREDERIC G. NAVÉ,
BOYD & TAYLOR,

By /s/ FREDERIC G. NAVÉ,
Attorneys for Appellant, Union Oil Company of California, a Corporation.

Receipt of copies acknowledged.

[Endorsed]: Filed November 7, 1957.

[Title of District Court and Cause.]

No. 27125

STIPULATION EXTENDING TIME TO FILE
RECORD AND DOCKET APPEAL

It is Hereby Stipulated and Agreed, by and between the attorneys for the parties hereto, subject to the order of the court, that the time within which respondent-appellant shall file the record on appeal and docket the appeal from judgment entered herein on October 11, 1957, in the United States Court of Appeals for the Ninth Circuit be extended to and including January 13, 1958.

Dated: December 12, 1957.

/s/ RUSSELL ZACHES,

/s/ SAMUEL VARTAN,

MICHELSON, WHELAN &
MICHELSON,

Attorneys for Libelant Antoine Belleci, Administrator of the Estate of Jacques Cardinale, Deceased.

FREDERIC G. NAVE,
BOYD & TAYLOR,

By /s/ FREDERIC G. NAVE,
Attorneys for Respondent-Appellant Union Oil
Company of California, a Corporation.

So Ordered: December 12, 1957.

/s/ GEO. B. HARRIS,

United States District Judge.

[Endorsed]: Filed December 16, 1957.

[Title of District Court and Cause.]

No. 27125

AFFIDAVIT OF FREDERIC G. NAVE

State of California,

City and County of San Francisco—ss.

Frederic G. Nave, being first duly sworn, deposes and says:

That he is an attorney and proctor of law duly licensed and admitted in the above-entitled court and is the proctor attorney for the appellant, Union Oil Company of California, a corporation, and makes this Affidavit for and on behalf of said appellant, Union Oil Company of California, a corporation; that heretofore on December 12, 1957, pursuant to stipulation and order of this court the time within which the Appellant, Union Oil Company of California, a corporation, should file its record on appeal and docket the appeal from the judgment entered herein on October 11, 1957, in the United States Court of Appeals for the Ninth Circuit was extended to and including January 13, 1958; that affiant has consulted with the reporters who are preparing the record and transcripts and has been advised that due to the press of work that the record and transcript is not yet completed and have requested an extension of time of thirty (30) days for such purposes; that affiant did communicate with Attorney John Whelan of the law firm of Michelson, Whelan & Michelson, of San Francisco,

who are the proctors and attorneys for the Libelant-Appellee, and did request the written stipulation consenting to such extension and was advised that while they would not grant a stipulation in writing that they had no objection to a court order granting such extension being entered.

/s/ FREDERIC G. NAVÉ.

Subscribed and sworn to before me this 13th day of January, 1958.

[Seal] /s/ VIRGINIA A. HAMILTON,
Notary Public in and for the City and County of
San Francisco, State of California.

My Commission Expires May 2, 1960.

[Endorsed]: Filed Jan. 13, 1958.

[Title of District Court and Cause.]

No. 27125

ORDER EXTENDING TIME

Upon reading the Affidavit of Frederic G. Nave, Proctor for Respondent and Appellant, Union Oil Company of California, a corporation, and for good cause appearing,

It Is Hereby Ordered that the time within which the Respondent-Appellant, Union Oil Company of California, a corporation, shall file the record or appeal and docket the appeal from the judgment

entered herein on October 11, 1957, in the United States Court of Appeals for the Ninth Circuit be extended to and including February 12, 1958.

Dated: This January 13, 1958.

/s/ O. D. HAMLIN,
United States District Judge.

[Endorsed]: Filed January 13, 1958.

[Title of District Court and Cause.]

Nos. 27124 and 27125
(Consolidated)

**CERTIFICATE OF CLERK TO
RECORD ON APPEAL**

Libel (Damages for Wrongful Death—\$150,-000.00).

Answer to Libel.

Answer to Libel for Damages for Wrongful Death.

Minute Order, dated August 5, 1957, consolidating cases for trial.

Final Decree.

Notice of Appeal.

Designation of Contents of Records on Appeal.

Stipulation Extending Time to File Record and Docket Appeal.

Affidavit of Frederic G. Nave.

Order Extending Time.

Libelant's Exhibits 1 to 12, inclusive.

Respondents' Exhibits A to W, inclusive.

(Exhibits placed in file 27117.)

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 16th day of January, A.D. 1958.

[Seal]

C. W. CALBREATH,
Clerk;

By /s/ WM. J. FLINN,
Deputy Clerk.

[Endorsed]: No. 15878. United States Court of Appeals for the Ninth Circuit. Union Oil Company of California, a Corporation, Appellant, vs. Antoine Belleci, Administrator of the Estate of Jacques Cardinale, Deceased, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed January 16, 1958.

Docketed: February 5, 1958.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 15878

ANTOINE BELLECI, Administrator of the Estate
of JACQUES CARDINALE, Deceased,

Libelant and Appellee,

vs.

UNION OIL COMPANY OF CALIFORNIA, a
Corporation, et al.,

Respondents and Appellants.

APPELLANT'S STATEMENT
OF POINTS ON APPEAL

Appellant, Union Oil Company of California, a corporation, hereby submits its concise statement of points upon which appellant intends to rely in this appeal as follows:

1. The Court erred in finding that the injuries sustained by the libelant were caused or occasioned by negligence of appellant proximately causing or contributing to the explosion of the F/V Santa Lucia.
2. The Court erred in finding that the injuries sustained by the libelant occurred because of fault or negligence on the part of this respondent.
3. The Court erred in not finding that the sole cause of the injuries to the libelant was due to the

unseaworthiness of the F/V Santa Lucia and to the personal and active negligence of Frank J. Cardinale, one of the co-owners of the F/V Santa Lucia.

4. The Court erred in finding that Charles Caldwell, the marine service station employee of appellant, was guilty of negligence contributing to the explosion and fire aboard the F/V Santa Lucia.

5. The Court erred in finding that respondent was guilty of negligence as a joint tort feasor in this action.

6. The Court erred in finding that the appellant, Union Oil Company of California, was at fault and to blame for the injuries received by the libelant.

7. The Court erred in finding that the respondent, Union Oil Company of California, was jointly at fault and to blame with the co-owners, Frances E. Cardinale, administratrix of the estate of Frank J. Cardinale, and Idaline Jenner Cardinale, the co-owners of the F/V Santa Lucia.

8. The Court erred in failing to find, as a conclusion of law, that the appellant, Union Oil Company of California, was not negligent in any manner contributing to the explosion and fire of the F/V Santa Lucia and resulting injuries to libelant.

9. The Court erred in making findings of fact that Charles Caldwell, an employee of respondent, Union Oil Company of California, was negligent

and at fault when he failed to look at the gasoline meter until 58½ gallons had been delivered to the F/V Santa Lucia.

10. The Court erred in its findings of fact that the failure of the said Charles Caldwell, an employee of the Union Oil Company of California, to look at the gasoline meter until 58½ gallons had been delivered, was negligence contributing to or causing the explosion and fire aboard the F/V Santa Lucia and resulting injuries to libelant.

11. The Court erred in making and entering the findings of fact that the respondent, Union Oil Company of California, was negligent and at fault in not exercising reasonable care or prudence and that its failure so to do was a proximate cause of the explosion and fire on the F/V Santa Lucia and the resulting injuries to libelant.

12. The Court erred in that the findings of fact heretofore mentioned are not supported by any evidence in the trial of said action.

13. The Court erred in that there was no evidence to support its findings of negligence against the said Caldwell or this appellant heretofore specifically mentioned.

14. The Court erred in adopting conclusions of law inconsistent with its findings of facts.

15. The Court properly concluded that the explosion aboard the F/V Santa Lucia was due to an unseaworthiness aboard the Santa Lucia and to the

personal and active negligence of Frank J. Cardinale, one of the co-owners of the ship, but conclusions of law holding appellant, Union Oil Company of California, to be a joint tort feasor was inconsistent therein.

16. The Court erred in awarding judgment in favor of libelant against this appellant.

17. The Court erred in allowing excessive damages against this appellant.

18. That the amount of damages awarded libelant against this appellant included maintenance and cure which, under the evidence of this case, should not have been awarded against appellant.

19. That the money judgment awarded appellant was excessive and was not supported by the evidence in this case.

Dated: February, 1958.

FREDERIC G. NAVE,
BOYD & TAYLOR,

/s/ FREDERIC G. NAVE,
Proctors for Appellant Union
Oil Company of California.

[Endorsed]: Filed Feb. 5, 1958.

[Title of Court of Appeals and Cause.]

No. 15878

DESIGNATION OF THE CONTENTS
OF RECORD ON APPEAL

Appellant Union Oil Company of California, a corporation, designates the entire record pursuant to Rule 17 (6) of the United States Court of Appeals for the Ninth Circuit, including the Reporter's Transcript and all exhibits.

Dated: February, 1958.

FREDERIC G. NAVÉ,
BOYD & TAYLOR,

By /s/ FREDERIC G. NAVÉ,
Proctors for Appellant Union Oil Company of California, a Corporation.

[Endorsed]: Filed Feb. 5, 1958.

